

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

NAVAEH WATKINS, et al.

PLAINTIFFS

VS.

CAUSE NO.: 3:23cv94-MPM-RP

UNITED STATES OF AMERICA

DEFENDANT

ORDER DENYING MOTION TO SUBSTITUTE

The plaintiff LeQuita Watkins has moved to substitute herself as the property party in place of her deceased co-plaintiff, Navaeh Watkins. ECF #23. The court finds the motion is not well taken and should be denied.

Federal Rule of Civil Procedure 25(a)(1) states, in part, “If a party dies and the claim is not extinguished, the court may order substitution of the proper party.” The “proper party” to prosecute the personal action of a deceased plaintiff is the deceased plaintiff’s legal representative. *Madison v. Vintage Petroleum, Inc.*, 872 F.Supp. 340, 342 (S.D. Miss. 1994). “Unless the estate of a deceased party has been distributed at the time of the making of the motion for substitution, the ‘proper’ party for substitution would be either the executor or administrator of the estate of the deceased.” *Id.* (denying motion to substitute deceased party’s sole heir as proper party) (quoting *Ashley v. Ill. Cent. Gulf R.R. Co.*, 98 F.R.D. 722, 723 (S.D. Miss. 1983); *see also* MISS. CODE. ANN. § 91-7-237 (“When either of the parties to any personal action shall die before final judgment, the executor or administrator of such deceased party may prosecute or defend such action, and the court shall render judgment for or against the executor or administrator.”))

In the present case, LeQuita Watkins states in her motion that she “is in the process of opening an estate.” It being apparent that LeQuita Watkins has not been appointed executor or administrator of the deceased plaintiff’s estate, her motion for substitution must be and is hereby

DENIED. The court will allow an additional period of time – until December 18, 2023 – within which a motion for substitution may be made, failing which the deceased plaintiff's action must be dismissed.

This, the 15th day of November, 2023.

/s/ Roy Percy

UNITED STATES MAGISTRATE JUDGE